

REMARKS/ARGUMENTS

In response to the Final Office Action mailed June 9, 2011 Applicants amend their application and request reconsideration in view of the amendments and the following remarks. In this amendment, claim 1 is proposed to be amended, no claims have been cancelled without prejudice and no claims have been added, so that claims 1, 2 and 4-7 are currently pending. No new matter has been entered.

Claims 1, 2 and 4-7 were rejected under 35 USC 112, second paragraph. Applicants have amended the claims to more clearly set forth the invention. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1, 2 and 4-7 were rejected as being unpatentable over US Patent No. 6,443,972 to Bosma et al. (Bosma) in view of US Patent No. 6,364,895 to Greenhalgh (Greenhalgh) and US Patent Publication No. 2004/0186510 to Weaver (Weaver). This rejection is respectfully traversed.

In order to make a finding of obviousness, an Examiner must (1) determine the scope and content of the prior art, including non-analogous art if it is in the field of endeavor reasonably related to the particular problem to which the claimed invention is directed, (2) ascertain the differences between the claimed invention and the prior art, considering both the prior art and claimed invention as a whole, and (3) resolve the level of ordinary skill in the art at the time of the invention, factoring in the creativity that one of ordinary skill in the art would employ as well as the Examiner's own knowledge and technical expertise.

It is respectfully submitted that the references taken as a whole fail to disclose or suggest all of the claimed limitations.

Bosma discloses a symmetrical vascular filter. All of the filter cells are of equal size. There is no recapture hook although recapture is suggested. Greenhalgh discloses an intraluminal filter for vascular use during medical procedures. It is delivered via a catheter and remains tethered thereto. Greenhalgh is made from a wire mesh and remains attached to a catheter. More specifically, Greenhalgh discloses a filter formed from a plurality of flexible, resilient monofilament wires inter-braided in a relatively open mesh forming a basket with a plurality of multifilament yarns braided in a relatively closed mesh having a predetermined porosity forming a filter element. The weave and design of Greenhalgh are such that the so called cells or openings are not of equal size. Weaver discloses an asymmetric embolic protection IVC filter with a hook on one end.

The present invention as claimed is a medical filter for therapeutic treatment of a patient, comprising: a first and second end defining a longitudinal axis; a plurality of struts extending between the first and second ends, the struts tending to resiliently expand in radially outward directions from a compressed initial shape to an expanded deployed shape; wherein in the expanded deployed shape, the struts define a first and second filter section and a center section connecting the filter sections, the center section comprising longitudinally oriented struts; wherein each of the first and second filter sections define a number of filter cells, and the second filter section defines a greater number of equally sized filter cells than the first filter section; such that the second filter section exhibits a greater filtering efficiency than the first filter section, the medical device being configured for retrievable implantation within a vessel and including a recapture hook structure with a symmetrical configuration for removal of the medical filter positioned on at least one end. The medical filter having its elements cut from a single tubular metal element for implantation in a patient. The medical filter is also completely detachable from its delivery system during deployment.

The combination of references as a whole fails to disclose or even suggest an asymmetrical filter formed from struts forming filter cells that are of equal size in each section and having a recapture hook for removal of the device from the patient. The recapture hook is symmetrical whereas Weaver is not. There is no reason to have combined the references without using the claimed invention as a template. Greenhalgh is an embolic protection device that remains attached to a delivery system and is formed from a mesh, while Bosma is a symmetrical vena cava filter. Never would the two be combined to develop an asymmetrical filter with a recapture hook as previously claimed. Greenhalgh is not in any way shape or form to be utilized for at least one of permanent, temporary or retrievable implantation. Weaver does have a hook, but is non-symmetrical and does not have greater filter capacity on one end. In the final analysis, the references as a whole fail to disclose or even remotely suggest all of the claimed elements even if one were able to combine the references. The references as a whole fail to disclose different filter cells in different sections with the size of the cell in each section being the same size. **Essentially, the combination of references fails to disclose or suggest a filter as claimed, including one that is cut from a single tube rather than formed from wires or mesh and which is also detachable from its delivery system.** The claimed invention is different from the combination of references in a fundamental way. KSR holds that the basic test for obviousness is set forth in *Graham v. Deere* in that there still must be teaching, suggestion or motivation to combine the references. These patents represent different types of filters with deferent problems to solve. Without a common problem, it would be difficult under a common sense rule to combine the teachings. In addition, not all of the stents are taught or suggested. Bosma discloses equal size cells not what is claimed. The other disclosures do not make up for this missing attribute. Nor is there a symmetrical recapture hook. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Applicant would be grateful for the opportunity to conduct a telephonic or in-person interview if the Examiner believes it would be helpful in disposing of the present case.

A favorable action on the merits is earnestly solicited.

Respectfully submitted,

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Dated: July 29, 2011